IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5697 OF 2005

Builders Site and Ors. ...Petitioner
vs.
The Pandharpur Urban
Co-op Bank Ltd and Ors. ....Respondents

Arun M. Ausekar, petitioner no. 3 present in person.

S.S. Shah as Amicus Curie.

G.S. Godbole for respondent no.1.

Mr. A.H. Palekar, AGP for Respondent no.3.

CORAM: S.U. KAMDAR, J.

DATE : 25th November, 2005.

P.C. :

1. In the present petition the petitioner has brought in question the jurisdiction and power of the Constituent assembly to frame the constituent for free India. It is his case that

the Constituent Assembly was not validly constituted because the members of the Constituent Assembly were not elected but selected. Some of the material facts of the present case are as under :

2. The basis on which the present proceedings are initiated is that the disputant respondent bank has filed five proceedings inrespect of separate loans taken by the petitioner for the recovery of the said amount under the provisions of Section 91 of the Maharashtra Co-operative Societies Act before the Co-operative court. Inrespect of two of the said proceedings the awards were made ex-parte and execution proceedings were resorted to. However he made an application for stay of execution proceedings and the Solpaur District Co-operative Court passed an order granting the stay in both the proceedings on a condition of Rs.1 lac each. Being aggrieved by the said order he preferred a revisions before the Maharashtra Co-operative appellate Tribunal, Pune. In one of the said

proceedings the learned member of the tribunal has held that the imposition on condition for grant of stay was invalid and has given relief to the petitioner by directing that the stay of execution will be without any condition. Inrespect of another matter on the facts of that case the Co-operative Appellate Tribunal has found it appropriate to reduce the deposit as condition of stay from Rs.1 lac to Rs.25,000/-. It this order of the reduction of the amount of deposit which has been challenged in this court. I am also informed by the learned counsel appearing for amicus curie that the said order is also subject matter of challenge in a pending review before the Maharashtra appellate Tribunal on the ground that the finding given of unconditional stay in one matter, whereas in the other matter being identical deposit is directed of Rs. 25,000/-. It is the case of the petitioner that in another matter also unconditional stay ought to have been granted. In view of the fact that the review petition is pending before the Co-operative Court I am not

inclined to go into the said controversy and leave the said appeal to be determined by the Co-operative appellate Tribunal in review proceedings by passing an appropriate order. However, I am informed that the aforesaid controversy is no more relevant because both the ex-parte awards are itself have been set aside by an order dated 12.5.2005 on cost of Rs.5,000/- and the main suit itself is restored. Thus the execution proceedings have come to an end. The learned counsel for respondent bank states that the order of 12.5.2004 has been further interfered with by the Co-operative Court by reducing the cost of Rs.5,000/- to Rs.2,000/- on the application of the petitioner and thus the question of going into the issue whether the stay of execution ought to have been granted unconditionally or conditionally does not survive any further.

3. In so far as the other three disputes are concerned there is no dispute between the parties that the same are still pending before the

Solapur Co-operative Court. However by filing the present writ petition the petitioner is seeking that all these disputes which are filed under Section 91 of the Maharashtra Co-operative Societies Act are illegal and without jurisdiction because according to him the enactment of the Maharashtra co-operative Societies Act which has been made by the said legislature is invalid in law. It is contended by the petitioner in person after arguments of the learned Counsel Mr. Shah is completed that the institution of parliament as well as the state legislature which has been the creature of the Constitution are invalid because the Constitution itself is invalid. It is thus contended that the enactment of the Maharashtra Co-operative Societies Act, 1960 by the State Legislature must be scrapped and should be striked down. He has further contended that by exercising power under Article 228 I should transfer all the proceedings pending before the Co-operative Court to this court and decide and determine the important question of law which has

been raised by him that the Constitution of this court is illegal, invalid and should be striked down.

4. In my opinion it is not necessary to say much on the arguments advanced by the petitioner in person in the present case. It is suffice to state that not only the legislature and parliament but even this court is also a creature of the Constitution of India and this court has no power and jurisdiction of any nature whatsoever to grant any such drastic relief which are sought by him in the present petition. In my opinion the present petition is devoid of any merits and is totally frivolous and vexatious. Petition is thus required to be dismissed. No order as to costs.

sd/-

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